

# ADMIRALTY/MARITIME JURISDICTION

## EXTENSION OF ADMIRALTY AND MARITIME JURISDICTION

**LIBEL IN REM OR IN PERSONAM; EXCLUSIVE REMEDY; WAITING PERIOD (46 App. U.S.C. 740 (1999)).** The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after the date of the passage of this Act and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

## SUITS IN ADMIRALTY ACT

**46 App. U.S.C. 741 (1999). Exemption of United States vessels and cargoes from arrest or seizure.** No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter [after March 9, 1920], in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: Provided, That this Act shall not apply to the Panama Railroad Company [Panama Canal Commission].

**46 App. U.S.C. 742 (1999). Libel in personam.** In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 1 of this Act. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have

their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

**46 App. U.S.C. 743 (1999). Procedure in cases of libel in personam.**

Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now [on March. 9, 1920] provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder.

**46 App. U.S.C. 744 (1999). Release of privately owned vessel after seizure.** If a privately owned vessel not in the possession of the United States or of such corporation is arrested or attached upon any cause of action arising or alleged to have arisen from previous possession, ownership, or operation of such vessel by the United States or by such corporation, such vessel shall be released without bond or stipulation therefor upon the suggestion by the United States, through its Attorney General or other duly authorized law officer, that it is interested in such cause, desires such release, and assumes the liability for the satisfaction of any decree obtained by the libelant in such cause, and thereafter such cause shall proceed against the United States in accordance with the provisions of this Act.

**46 App. U.S.C. 745 (1999). Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims.** Suits as herein authorized may be brought only within two years after the cause of action arises: Provided, That where a remedy is provided by this Act it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or

employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after the enactment of this amendatory Act [enacted December. 13, 1950] if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel: And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit on such claim is brought as authorized by section 2 of this Act unless upon a contract expressly stipulating for the payment of interest.

**46 App. U.S.C. 746 (1999). Exemptions and limitations of liability.**

The United States or such corporation shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators, or agents of vessels.

**46 App. U.S.C. 747 (1999). Seizures in foreign jurisdictions.** If any vessel or cargo within the purview of sections 1 and 4 of this Act is arrested, attached, or otherwise seized by process of any court in any country other than the United States, or if any suit is brought therein against the master of any such vessel for any cause of action arising from, or in connection with, the possession, operation, or ownership of any such vessel, or the possession, carriage, or ownership of any such cargo, the Secretary of State of the United States in his discretion, upon the request of the Attorney General of the United States, or any other officer duly authorized by him, may direct the United States consul residing at or nearest the place at which such action may have been commenced to claim such vessel or cargo as immune from such arrest, attachment, or other seizure, and to execute an agreement, undertaking, bond, or stipulation for and on behalf of the United States, or the Maritime Administration, or such corporation as by said court required, for the release of such vessel or cargo, and for the prosecution of any appeal; or may, in the event of such suits against the master of any such vessel, direct said United States consul to enter the appearance of the United States, or of the Maritime Administration, or of such corporation, and to pledge the credit thereof to the payment of any judgment and cost that may be entered in such suit. The Attorney General is hereby vested with power and authority to arrange with any bank, surety company, person, firm, or corporation in the United States, its Territories and possessions, or in any foreign country, to execute any

such aforesaid bond or stipulation as surety or stipulator thereon, and to pledge the credit of the United States to the indemnification of such surety or stipulator as may be required to secure the execution of such bond or stipulation. The presentation of a copy of the judgment roll in any such suit, certified by the clerk of the court and authenticated by the certificate and seal of the United States consul claiming such vessel or cargo, or his successor, and by the certificate of the Secretary of State as to the official capacity of such consul, shall be sufficient evidence to the proper accounting officers of the United States, or of the Maritime Administration, or of such corporation, for the allowance and payment of such judgments: Provided, however, That nothing in this section shall be held to prejudice or preclude a claim of the immunity of such vessel or cargo from foreign jurisdiction in a proper case.

**46 App. U.S.C. 748 (1999). Payment of judgment, award, or settlement.** Any final judgment rendered in any suit herein authorized, and any final judgment within the purview of sections 4 and 7 of this Act, and any arbitration award or settlement had and agreed to under the provisions of section 9 of this Act, shall, upon the presentation of a duly authenticated copy thereof, be paid by the proper accounting officers of the United States out of any appropriation or insurance fund or other fund especially available therefor; otherwise there is appropriated, out of any money in the Treasury of the United States not otherwise appropriated, a sum sufficient to pay any such judgment or award or settlement.

**46 App. U.S.C. 749 (1999). Arbitration, compromise, or settlement of claims.** The Secretary of any department of the Government of the United States, or the board of trustees of such corporation, are, and each is, authorized to arbitrate, compromise, or settle any claim in which suit will lie under the provisions of sections 2, 4, 7, and 10 of this Act

**46 App. U.S.C. 750 (1999). Recovery for salvage services by vessel or crew.** The United States, and the crew of any merchant vessel owned or operated by the United States, or such corporation, shall have the right to collect and sue for salvage services rendered by such vessel and crew, and any moneys recovered therefrom by the United States for its own benefit, and not for the benefit of the crew, shall be covered into the United States Treasury to the credit of the department of the Government of the United States, or of such corporation, having control of the possession or operation of such vessel.

**46 App. U.S.C. 751 (1999). Disposition of moneys recovered by the United States.** All moneys recovered in any suit brought by the United States on any cause of action arising from, or in connection with, the possession, operation, or ownership of any merchant vessel, or the possession, carriage, or ownership of any cargo, shall be covered into the

United States Treasury to the credit of the department of the Government of the United States, or of such aforesaid corporation, having control of the vessel or cargo with respect to which such cause of action arises, for reimbursement of the appropriation, or insurance fund, or other funds, from which the loss, damage, or compensation for which said judgment was recovered has been or will be paid.

**46 App. U.S.C. 752 (1999). Reports as to awards and settlements.**

The Secretary of any department of the Government of the United States, and the board of trustees of any such aforesaid corporation, shall likewise report the arbitration awards or settlements of claims which shall have been agreed to since the previous session, and in which the time to appeal shall have expired or have been waived.

# **PUBLIC VESSELS ACT**

**SEC. 1. LIBEL IN ADMIRALTY AGAINST OR IMPLAINDER OF UNITED STATES (46 App. U.S.C. 781 (1999)).** A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: Provided, That the cause of action arose after the 6th day of April, 1920.

**SEC. 2. VENUE OF SUIT; APPLICATION OF PROVISIONS OF THE SUITS IN ADMIRALTY ACT (46 App. U.S.C. 782 (1999)).** Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

**SEC. 3. CROSS LIBEL, SET-OFF, OR COUNTERCLAIM (46 App. U.S.C. 783 (1999)).** In the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: Provided, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

**SEC. 4. SUBPOENAS TO OFFICERS OR MEMBERS OF CREWS (46 App. U.S.C. 784 (1999)).** No officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the Secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

**SEC. 5. SUITS BY NATIONALS OF FOREIGN GOVERNMENTS (46 App. U.S.C. 785 (1999)).** No suit may be brought under this Act by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

**SEC. 6. ARBITRATION, COMPROMISE, OR SETTLEMENT (46 App. U.S.C. 786 (1999)).** The Attorney General of the United States is authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

**SEC. 7. PAYMENT OF JUDGMENTS OR SETTLEMENTS (46 App. U.S.C. 787 (1999)).** Any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 6 of this Act, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

**SEC. 8. LIEN NOT CREATED AGAINST PUBLIC VESSELS (46 App. U.S.C. 788 (1999)).** Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

**SEC. 9. EXEMPTIONS AND LIMITATIONS OF LIABILITY (46 App. U.S.C. 789 (1999)).** The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators or agents of vessels.

**SEC. 10. REPORTS BY ATTORNEY GENERAL (46 App. U.S.C. 790 (1999)).** The Attorney General of the United States shall report to the Congress at each session thereof all claims which shall have been settled under this act.

# **EMERGENCY FOREIGN VESSELS ACQUISITION ACT**

**SEC. 1. EMERGENCY FOREIGN VESSEL ACQUISITION; PURCHASE OR REQUISITION OF VESSELS LYING IDLE IN UNITED STATES WATERS (50 U.S.C. 196 (1999)).** During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, the President is authorized and empowered through the Secretary of Transportation to purchase, or to requisition, or for any part of such period to charter or requisition the use of, or to take over the title to or possession of, for such use or disposition as he shall direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense. Just compensation shall be determined and made to the owner or owners of any such vessel in accordance with the applicable provisions of section 902 of the Merchant Marine Act, 1936, as amended. Such compensation hereunder, or advances on account thereof, shall be deposited with the Treasurer of the United States in a separate deposit fund. Payments for such compensation and also for payment of any valid claim upon such vessel in accord with the provisions of the second paragraph of subsection (d) of such section 902, as amended, shall be made from such fund upon the certificate of the Secretary of Transportation.

**SEC. 2. VOLUNTARY PURCHASE OR CHARTER AGREEMENTS (50 U.S.C. 197 (1999)).** During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, the President is authorized through the Secretary of Transportation to acquire by voluntary agreement of purchase or charter the ownership or use of any merchant vessel not owned by citizens of the United States.

**SEC. 3. REQUISITIONED VESSELS (50 U.S.C. 198 (1999)).**

(a) **Documentation of Vessels.** Any vessel not documented under the laws of the United States, acquired by or made available to the Secretary of Transportation under this Act, or otherwise, may, notwithstanding any other provision of law, in the discretion of the Secretary of the Treasury be documented as a vessel of the United States under such rules and regulations or orders, and with such limitations, as the Secretary of the Treasury may prescribe or issue as necessary or appropriate to carry out the purposes and provisions of this Act, and in accordance with the provisions of subsection (c) hereof, engage in the coastwise trade when so documented. Any document issued to a vessel



under the provisions of this subsection shall be surrendered at any time that such surrender may be ordered by the Secretary of the Treasury. No vessel, the surrender of the documents of which has been so ordered, shall, after the effective date of such order, have the status of a vessel of the United States unless documented anew.

(b) **Waiver of Compliance.** The President may, notwithstanding any other provisions of law, by rules and regulations or orders, waive compliance with any provision of law relating to masters, officers, members of the crew, or crew accommodations on any vessel documented under authority of this section to such extent and upon such terms as he finds necessary because of the lack of physical facilities on such vessels, and because of the need to employ aliens for their operation. No vessel shall cease to enjoy the benefits and privileges of a vessel of the United States by reason of the employment of any person in accordance with the provisions of this subsection.

(c) **Coastwise Trade; Inspection.** Any vessel while documented under the provisions of this section, when chartered under this Act by the Secretary of Transportation to Government agencies or departments or to private operators, may engage in the coastwise trade under permits issued by the Secretary of Transportation, who is hereby authorized to issue permits for such purpose pursuant to such rules and regulations as he may prescribe. The Secretary of Transportation is hereby authorized to prescribe such rules and regulations as he may deem necessary or appropriate to carry out the purposes and provisions of this section. The second paragraph of section 9 of the Shipping Act, 1916, as amended, shall not apply with respect to vessels chartered to Government agencies or departments or to private operators or otherwise used or disposed of under this Act. Existing laws covering the inspection of steam vessels are hereby made applicable to vessels documented under this section only to such extent and upon such conditions as may be required by regulations of the Secretary of the department in which the Coast Guard is operating: Provided, That in determining to what extent those laws should be made applicable, due consideration shall be given to the primary purpose of transporting commodities essential to the national defense.

(d) **Reconditioning of Vessels.** The Secretary of Transportation without regard to the provisions of section 3709 of the Revised Statutes may repair, reconstruct, or recondition any vessels to be utilized under this Act. The Secretary of Transportation and any other Government department or agency by which any vessel is acquired or chartered, or to which any vessel is transferred or made available under this Act may, with the aid of any funds available and without regard to the provisions of said section 3709, repair, reconstruct, or recondition any such vessels

to meet the needs of the services intended, or provide facilities for such repair, reconstruction, or reconditioning. The Secretary of Transportation may operate or charter for operation any vessel to be utilized under this Act to private operators, citizens of the United States, or to any department or agency of the United States Government, without regard to the provisions of title VII of the Merchant Marine Act, 1936, and any department or agency of the United States Government is authorized to enter into such charters.

(e) **Effective Period.** In case of any voyage of a vessel documented under the provisions of this section begun before the date of termination of an effective period of section 1 hereof, but is completed after such date, the provisions of this section shall continue in effect with respect to such vessel until such voyage is completed.

(f) **Definition.** When used in this Act, the term “documented” means “registered,” “enrolled and licensed,” or “licensed”.

# NATIONAL EMERGENCIES ACT<sup>1</sup>

## **SEC. 101. TERMINATION OF EXISTING DECLARED EMERGENCIES (50 U.S.C. 1601 (1999)).**

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

(1) any action taken or proceeding pending not finally concluded or determined on such date;

(2) any action or proceeding based on any act committed prior to such date; or

(3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words “any national emergency in effect” means a general declaration of emergency made by the President.

## **SEC. 201. DECLARATION OF NATIONAL EMERGENCY BY PRESIDENT; PUBLICATION IN FEDERAL REGISTER; EFFECT ON OTHER LAWS; SUPERSEDING LEGISLATION (50 U.S.C. 1621 (1999)).**

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

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<sup>1</sup> Section numbers refer to Public Law 94-412, approved September 14, 1976 (90 STAT. 1255), the National Emergency Act, as amended.

## **SEC. 202. NATIONAL EMERGENCIES (50 U.S.C. 1622 (1999)).**

(a) **Termination Methods.** Any national emergency declared by the President in accordance with this title shall terminate if—

- (1) there is enacted into law a joint resolution terminating the emergency; or
- (2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

### **(b) Termination Review of National Emergencies by Congress.**

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

### **(c) Joint Resolution; Referral to Congressional Committees; Conference Committee in Event of Disagreement; Filing of Report; Termination Procedure Deemed Part of Rules of House and Senate.**

(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)—(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

**(d) Automatic Termination of National Emergency; Continuation Notice from President to Congress; Publication in Federal Register.** Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

**SEC. 301. DECLARATION OF NATIONAL EMERGENCY BY EXECUTIVE ORDER, AUTHORITY; PUBLICATION IN FEDERAL REGISTER, TRANSMITTAL TO A CONGRESS (50 U.S.C. 1631 (1999)).** When the President declares a national emer-

gency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

**SEC. 401. ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT (50 U.S.C. 1641 (1999)).**

(a) **Maintenance of File and Index of Presidential Orders, Rules, and Regulations During National Emergency.** When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) **Presidential Orders, Rules and Regulations; Transmittal to Congress.** All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) **Expenditures During National Emergency; Presidential Reports to Congress.** When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

**SEC. 502. OTHER LAWS, POWERS AND AUTHORITIES CONFERRED THEREBY, AND ACTIONS TAKEN THEREUNDER; CONGRESSIONAL STUDIES (50 U.S.C. 1651 (1999)).**

(a) The provisions of this act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- (1) [Repealed]
- (2) Act of April 28, 1942 (40 U.S.C. 278b);
- (3) Act of June 30, 1949 (41 U.S.C. 252);

- (4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);
  - (5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);
  - (6) Public Law 85-804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431 et seq.);
  - (7) Section 2304(a)(1) of title 10;
  - (8) [Repealed]
- (b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this act.

# DEFENSE PRODUCTION ACT

## [Excerpts]

### **SECTION. 708. (50 U.S.C. APP. 2158 (1999)) VOLUNTARY AGREEMENTS FOR PREPAREDNESS PROGRAMS AND EXPANSION OF PRODUCTION CAPACITY AND SUPPLY**

(a) **Immunity from civil and criminal liability or defense to action under antitrust laws; exceptions.** Except as specifically provided in subsection (j) of this section, no provision of this Act shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) **Definitions.** For purposes of this Act —

(1) *Antitrust laws.* The term “antitrust laws” has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(2) *Plan of action.* The term “plan of action” means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

(c) **Prerequisites for agreements; delegation of authority to Presidential designees.**

(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the defense of the United States through the development of preparedness programs and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).



**(d) Advisory committees; establishment; applicable provisions; membership; notice and participation in meetings; verbatim transcript; availability to public.**

(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this Act or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5, United States Code) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

**(e) Rules; promulgation by Presidential designees; consultation by Attorney General with Chairman of Federal Trade Commission; approval of Attorney General; procedures; incorporation of standards and procedures for development of agreements.**

(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, United States Code, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5, United States Code—

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate,

and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter of matters to be discussed at such meeting falls within the purview of matters to be described in section 552b(c) of title 5, United States Code;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5, United States Code.

**(f) Commencement of agreements; expiration date; extensions.**

(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement which becomes effective under paragraph (1) shall expire two years after the date it becomes effective (and at two-year intervals thereafter, as the case may be), unless in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publish such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of two years.

**(g) Monitoring of agreements by Attorney General and Chairman of Federal Trade Commission.** The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

(1) that the agreement or plan is carrying out the purposes of subsection (c)(1);

(2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement or plan; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

**(h) Required provisions of rules for implementation of agreements.** The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

(1) for the maintenance, by participants in any voluntary agreement and plans of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;

(2) that participants in any voluntary agreement and plans of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5, United States Code;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5 of the United States Code) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action; unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, United States Code, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission), may terminate or modify, in writing, the voluntary agreement or plan of action at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

**(i) Rules; promulgation by Attorney General and Chairman of Federal Trade Commission.** The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

**(j) Defenses.**

(1) *In general.* Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

(2) *Scope of defense.* Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

(3) *Burden of persuasion.* Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

(4) *Exception for actions taken to violate the antitrust laws.* The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

**(k) Surveys and studies by Attorney General and Federal Trade Commission; content; annual report to Congress and President by Attorney General.** The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

**(l) Annual report to Congress and President by Presidential designees; contents.** The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

**(m) Jurisdiction to enjoin statutory exemption or suspension and order for production of transcripts, etc.; procedures.** On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the

production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Commission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

**(n) Exemption From Advisory Committee Act provisions.**

Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

**(o) Preemption of contract law in emergencies.** In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

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**SECTION 711(b) (50 U.S.C. App. 2161 (1999) AUTHORIZATION OF APPROPRIATIONS; AVAILABILITY OF FUNDS.**

**(a) Authorization.** Except as provided in subsection (b), there are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act (including sections 302 and 303, but excluding sections 305 and 306) by the President and such agencies as he may designate or create. Funds made available pursuant to this paragraph for the purposes of this Act may be allocated or transferred for any of the purposes of this Act with the approval of the Office of Management and Budget, to any agency designated to assist in carrying out this Act. Funds so allocated or transferred shall remain available for such period as may be specified in the Acts making such funds available.

(b) **Title III authorization.** There are authorized to be appropriated for each of the fiscal years 1996 through 2000 such sums as may be necessary to carry out title III.

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**SECTION. 717. (50 U.S.C. App. 2166 (1999)) TERMINATION OF ACT.**

(a) Title I (except section 104), title III, and title VII (except sections 708 and 721), and all authority conferred thereunder, shall terminate at the close of September 30, 2000: Provided, That all authority hereby or hereafter extended under title III of this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act, and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104, title II, and title VI of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1953. Titles IV and V of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

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# **CIVIL PROCEDURES**

## **CIVIL PENALTY PROCEDURES (49 U.S.C. 336 (1999)).**

(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

## **ORDER OF FEDERAL AGENCIES, REVIEW—THE HOBBS ACT**

**JURISDICTION OF COURT OF APPEALS. (28 U.S.C. 2342 (1999)).** The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of—

\* \* \*

(3) all rules, regulations, or final orders of—

(A) the Secretary of Transportation issued pursuant to section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839[, and 841a]) or pursuant to part B or C of subtitle IV of title 49; and

(B) the Federal Maritime Commission issued pursuant to—

(i) section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876);

(ii) section 14 or 17 of the Shipping Act of 1984 (46 U.S.C. App. 1713 or 1716); or

(iii) section 2(d) or 3(d) of the Act of November 6, 1966 (46 U.S.C. App. 817d(d) or 817e(d)[]);

(iv), (v) [Redesignated]

\* \* \*

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

\* \* \*

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

**VENUE. (28 U.S.C. 2343 (1999)).** The venue of a proceeding under this chapter is in the judicial circuit in which the petitioner resides or has its principal office, or in the United States Court of Appeals for the District of Columbia Circuit.

**REVIEW OF ORDERS; TIME; NOTICE; CONTENTS OF PETITIONS; SERVICE (28 U.S.C. 2344 (1999)).**

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

- (1) the nature of the proceedings as to which review is sought;
- (2) the facts on which venue is based;
- (3) the grounds on which relief is sought; and
- (4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

**PREHEARING CONFERENCE (28 U.S.C. 2345 (1999)).** The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

**CERTIFICATION OF RECORD ON REVIEW (28 U.S.C. 2346 (1999)).** Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

**PETITIONS TO REVIEW, PROCEEDINGS (28 U.S.C. 2347 (1999)).**

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency; the court may order the additional evidence and any counter evidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

**REPRESENTATION IN PROCEEDING; INTERVENTION (28 U.S.C. 2348 (1999)).** The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associa-

tions, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

### **JURISDICTION OF THE PROCEEDING (28 U.S.C. 2349 (1999)).**

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60 days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

### **REVIEW IN SUPREME COURT ON CERTIORARI OR CERTIFICATION (28 U.S.C. 2350 (1999)).**

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the

Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

**ENFORCEMENT OF ORDERS BY DISTRICT COURTS (28 U.S.C. 2351 (1999)).** The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.